

SENATE BILL 203
By Dixon

AN ACT to amend Tennessee Code Annotated, Title 45 and Title 47, relative to predatory lending.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Predatory Lending Prevention Act".

SECTION 2. (a) The legislature finds that:

(1) There has been a dramatic increase in the level of subprime lending in the state. Nationally, subprime lending grew nine hundred percent (900%) from 1993 to 1999.

(2) Subprime loans are intended for people who, because of blemished credit, are unable to obtain conventional prime loans at standard mortgage rates.

(3) While subprime lending is a legitimate practice, expanding access to credit for home ownership, most predatory practices occur in the subprime lending market.

(4) Predatory lenders tend to target groups that can least afford to be stripped of their assets—lower income families, minorities, and elderly citizens.

(5) Tennessee must act to protect its residents from the most abusive loan practices.

(b) This act is enacted to protect the equity and property of homeowners, provide needed consumer protections, and safeguard the economic vitality of our state.

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 23, Part 1, is amended by adding the following language as new, appropriately designated section:

47-23-107.

(a) As used in this section, unless the context otherwise requires:

(1) "Annual percentage rate" means the annual percentage rate for the loan, calculated according to the provisions of the federal Truth In Lending Act (15 U.S.C. 1601, et seq.), and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, as such act and regulations are amended from time to time.

(2) "Borrower" means any individual obligated to repay the loan, including a co-borrower, cosigner or guarantor.

(3) "Flipping" means knowingly refinancing an existing home loan when any of the following occurs:

(A) More than fifty percent (50%) of the prior debt refinanced bears a lower interest rate than the new loan.

(B) The borrower's payment of prepaid finance charges and closing costs reduces the interest rate so that it will take more than five (5) years of reduced interest rate payments for the borrower to recoup the transaction's costs.

(C) Refinancing a special mortgage originated, subsidized or guaranteed by or through a state or local government, or nonprofit organization, which bears either a below-market interest rate, or has

nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one (1) or more of the benefits of the special mortgage.

(4) "High-cost home loan" means a home loan where:

(A) The total points and fees on the loan exceed five percent (5%) of the total loan amount, or

(B) The annual percentage rate of interest of the home loan equals or exceeds eight (8) percentage points over the yield on U.S. Treasury securities that have comparable periods of maturity to the loan maturity, as of the fifteenth (15th) day of the month immediately preceding the month in which the application for credit is received by the lender.

(5) "Home loan" means a loan, other than a reverse mortgage transaction, where the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, and the loan is secured by a mortgage or deed of trust on real estate upon which there is located or is to be located a structure or structures, designed principally for occupancy of from one (1) to four (4) families, which is or will be occupied by a borrower as the borrower's principal dwelling. Home loan does not include an open-end line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations.

(6) "Lender" means any entity that originated, or acted as a mortgage broker for, more than five (5) home loans within the previous twelve (12) months.

(7) "Points and fees" means:

(A) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

(B) All compensation and fees paid to mortgage brokers in connection with the loan transaction.

(C) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

(8) "Total loan amount" means the same as in Section 226.32 of Title 12 of the Code of Federal Regulations.

(b)

(1) No lender shall:

(A) Recommend or encourage non-payment on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt.

(B) Compensate, whether directly or indirectly, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a home loan or is being offered as security according to an application for a home loan.

(C) Leave blanks in any loan documents to be filled in after they are signed by the borrower.

(2) No lender shall require or allow the advance collection of a premium, on a single premium basis, for any credit life, credit disability, credit unemployment, or credit property insurance, or the advance collection of a fee for any debt cancellation or suspension agreement or contract, in connection with any home

loan, whether such premium or fee is paid directly by the consumer or is financed by the consumer through such loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

(c)

(1) No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments during the first seven (7) years of the loan. This provision does not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower, or a bridge loan with a maturity of less than twelve (12) months that requires only payments of interest until the entire unpaid balance is due.

(2) No high-cost home loan shall contain a prepayment penalty of more than three percent (3%) of the original principal amount of the note in the first year, two percent (2%) in the second year, one percent (1%) in the third year, or any prepayment penalty beyond the third year.

(3) No high-cost home loan may include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due. This provision does not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower.

(4) No high-cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) No high-cost home loan may include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(7) A lender may not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless the instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(8) A lender may not offer a high-cost home loan while engaged in the practice of flipping.

(9) A lender may not charge a borrower any fees or other charges to modify, renew, extend or amend a high-cost home loan, or to defer any payment due under the terms of a high-cost home loan, except when the borrower is in default of the loan.

(10) A lender may not originate a high-cost home loan without first receiving certification from a counselor approved by the United States Department of Housing and Urban Development, a state housing financing agency, or the regulatory agency which has jurisdiction over the lender, that the borrower has received counseling on the advisability of the loan transaction.

(d) The provisions of subsection (c) do not apply to a loan purchased by, and in conformity with, the underwriting guidelines and servicing procedures of the Federal National Mortgage Association.

(e)

(1) This act may be enforced by a private cause of action under the consumer protection act, title 47, chapter 18, part 1.

(2) This act shall be enforced by the commissioner of financial institutions. The commissioner shall promulgate such rules and regulations in accordance with the uniform administrative procedures act, title 4, chapter 5, as are necessary to implement and administer compliance with this act.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect on July 1, 2003, the public welfare requiring it.